

REMARKS

Applicant would like to thank the Examiner for the detailed Official Action provided. Upon entry of the present response, independent claims 1 and 4 will have been amended. No new matter will have been introduced by the above-made amendments. Applicant notes that the status of the present application is after final rejection and that once a final rejection has issued, an Applicant does not have a right to amend an application. Nevertheless, in the present situation, Applicant respectfully submits that entry of the present amendment is appropriate and proper and in full compliance with 37 C.F.R. § 1.116, since Applicant has merely clarified for the Examiner the relationship between the cutter and the capsule holder. In this regard, Applicant respectfully submits that the present amendment raises no issues requiring further consideration or search and thus should be entered by the Examiner. Accordingly, claims 1-6 are pending for consideration by the Examiner. Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections of the claims pending in the present application. Such action is respectfully requested and is now believed to be appropriate.

Obviousness Rejections Under 35 U.S.C. §103

In the Official Action, the Examiner has rejected claims 1 – 6 under 35 U.S.C. §103(a) as being unpatentable over OHKI et al. (U.S. Pat. No.6,298,846) in view of COCOZZA (U.S. Pat. No. 4,013,075). Applicant respectfully traverses each of the above-noted rejections.

However, without acquiescing in the propriety of each of the above-noted rejections, Applicant has amended independent claims 1 and 4 merely clarifying for the Examiner the distinctions between the present invention and the alleged combination of OHKI and COCOZZA. In this regard, Applicant respectfully submits that OHKI, either alone or in any

proper combination with COCOZZA, fails to disclose or render obvious at least the combination of features as generally recited in amended independent claims 1 and 4.

Independent claims 1 and 4, as amended, each generally recite a device to deliver a powdery medicine contained in a capsule to a nasal cavity. Each device includes, *inter alia*, a main body and a capsule holder that holds a capsule. The device also includes a cutter that partially cuts off both ends of the capsule as the capsule moves forward to a loading position while being held by the capsule holder such that the cutter makes the holes on opposite ends of the capsule. The cutter further includes a pair of blades secured in parallel with each other at opposite sides of the loading space in a sliding direction of the capsule holder between connection ports, and each blade has a blade tip directed in a direction opposing the sliding direction of the capsule holder towards the loading position.

In setting forth the rejection of independent claims 1 and 4, the Examiner asserts that OHKI discloses the combination of features, as generally recited, including that OHKI discloses seal projections that project from surfaces of the blades towards the loading space. However the Examiner admits, and Applicant agrees, that OHKI fails to disclose 1) that both blades tips are directed in a direction opposing the advancing direction of the capsule holder, and 2) a pump.

With respect to 1), the Examiner asserts that it would have been an obvious matter of design choice to modify OHKI to include both pin tips (at ref. 27) opposing the advancing direction of the capsule holder 8, rather than being positioned in a direction perpendicular to the advancing direction of the capsule holder 8, as disclosed. The Examiner also asserts that absent a teaching of criticality regarding the arrangement of the blade tips, this type of arrangement is deemed to be known by those having ordinary skill in the art.

With respect to 2), the Examiner introduces COCOZZA for a teaching of a pump in a device to delivery powdery medicine. In this regard, the Examiner further asserts that it would have been obvious to one having ordinary skill in the art to modify OHKI to include the pump of COCOZZA for the purpose of providing an air supply that delivers the powdery medicine, rather than having the user inhale for the same purpose.

Applicant respectfully disagrees with the Examiner's assertions for at least the following reasons. First, contrary to the Examiner's assertions that OHKI discloses seal projections that project from surfaces of the blades towards the loading space, Applicants submit OHKI fails to provide any structures that project from surfaces of the pins 27. In this regard, OHKI merely discloses that the pins 27 are housed unobstructed within insertion holes 13 and 14. At best, it appears that base portions of the pins 27 appear to project from supporting section 26 of the perforating tool 25, but no sealing projections appear to project from surfaces of the pins 27 towards the loading space. In other words, contrary to the Examiner's conclusory remarks, no surface of the pins 27 (other than the base portion) appear to have structural members projecting from them towards the loading space. Accordingly, OHKI fails to disclose or render obvious these features.

Second, and contrary to the Examiner's assertion that it would have been an obvious matter of design choice to modify OHKI to include both pin tips (at ref. 27) opposing the advancing direction of the capsule holder 8, Applicant submits that OHKI explicitly discloses that the pins 27 are specifically configured so that the inclined faces face each other (in a direction perpendicular to the advancing direction of the capsule holder) for the purpose of preventing burrs B (created by the perforated capsules K) from separating from the capsule K during inhalation by the user. This specific configuration simplifies cleaning operations of the

inhaler, and prevents coughing fits by the user during operation (by preventing burrs from being released into the inhalation channels). *See e.g.*, col. 9, line 66 – col. 10, line 3; *see also* col. 11, lines 5-17. Accordingly, contrary to the Examiner's assertion, Applicant respectfully submits that one having ordinary skill in the art would not reasonably consider modifying the configuration of the OHKI blades, as suggested by the Examiner, at because such a modification would render the specifically configured OHKI device inoperable for its intended use, *i.e.*, that is, to simply cleaning operations of the device and to prevent burrs from being inhaled by the user during operation of the device. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding assertion.

Applicant further submits that in a non-limiting embodiment of the present invention, as can be seen, *e.g.*, in at least FIG. 2, the cutter (11a, 11b) is stationary (*i.e.*, fixed) within the main body 3, and that the capsule holder 10 slides relative to the cutter (11a, 11b). In this particular configuration, the blade tips of the cutter (11a, 11b) are provided so as to be clearly positioned in the sliding direction of the capsule holder. In contrast, OHKI clearly discloses that pins 27 are provided in a direction *perpendicular*, to the sliding direction of the capsule holder 8. *See e.g.*, FIG. 7 of OHKI. That is, the pins 27 are not provided in the sliding direction of the capsule holder 8. Accordingly, Applicant respectfully submits that OHKI, either along or in any proper combination with COCOZZA, fails to disclose or render obvious the combination of features, as generally recited in amended independent claim 1 and 4.

Further, Applicant asserts that because rejected claims 2, 3, 5 and 6 are dependent, either directly or indirectly, from at least one of allowable independent claims 1 and 4, which are allowable for at least the reasons discussed *supra*, these dependent claims are also allowable for at least the reasons discussed *supra*. Further, claims 2, 3, 5 and 6 each set forth further

combinations of elements neither disclosed nor rendered obvious by any of the references of record. It is thus respectfully requested that the Examiner withdraw the rejections of claims 2, 3, 5 and 6 under 35 USC §103(a), as well.

Thus, for each of the above-noted reasons and certainly for all of the above-noted reasons, it is respectfully asserted that the Examiner's rejections are inappropriate and improper. Accordingly, Applicant respectfully requests reconsideration and withdrawal of each of the outstanding rejections together with an action indicating the allowability of all the claims pending in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

SUMMARY AND CONCLUSION

Applicant asserts that the present application is in condition for allowance, and respectfully requests an indication to that effect. Applicant has argued the allowability of the claims and pointed out deficiencies of the applied references. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Applicants note that this amendment is being made to advance prosecution of the application to allowance, and should not be considered as surrendering equivalents of the territory between the claims prior to the present amendment and the amended claims. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,
Tatsuo TSUTSUI



Bruce H. Bernstein
Reg. No. 29,027

**Steven B. Pollicoff
Reg. No. 60,311**

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GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191